

# Public Interest Disclosure Procedure

## Section 1 - Purpose

(1) This procedure outlines the steps to be undertaken in the event a disclosure of wrongdoing within the University of Newcastle (University) is made to the University.

## Section 2 - Audience

(2) This procedure applies to all University public officials as defined by the [Public Interest Disclosure Policy](#) and the [Public Interest Disclosure Act 1994 NSW](#) (PID Act).

(3) This procedure does not apply to University community members, as defined by the Whistleblower Policy.

(4) This document should be read in conjunction with the [Public Interest Disclosure Policy](#).

## Section 3 - Scope

(5) This procedure applies to any report made by a University public official of corrupt conduct, maladministration, serious and substantial waste of public money and Government Information (Public Access) infringements that are believed to have occurred within the University.

(6) This procedure does not apply to complaints by University staff regarding a personal grievance, performance management, safety, discrimination, or equal employment opportunity.

(7) Matters raised by University public officials which do not meet the definition of a public interest disclosure, as defined by the [PID Act](#), may still be investigated, in full or in part, in accordance with this procedure.

## Section 4 - Definitions

(8) In the context of this document:

- a. “detrimental action” has the same meaning as defined in the [PID Act](#);
- b. “discloser” means a person who discloses or attempts to disclose wrongdoing to the University and wishes to avail themselves of protection against reprisal;
- c. “disclosure” means a report of wrongdoing and includes making a public interest disclosure;
- d. “Disclosure Officer” is an additional point of contact within the University's reporting system for any discloser to make a disclosure. The Disclosure Officers are:
  - i. Deputy Vice-Chancellor (Academic) and Vice President;
  - ii. Deputy Vice-Chancellor (Research and Innovation);
  - iii. Senior Deputy Vice-Chancellor and Vice-President - Global Engagement and Partnerships;
  - iv. Chief Operating Officer;
  - v. Chief Financial Officer;

- vi. Pro Vice-Chancellor Business and Law;
- vii. Pro Vice-Chancellor Education and Arts;
- viii. Pro Vice-Chancellor Engineering and Built Environment;
- ix. Pro Vice-Chancellor Health and Medicine;
- x. Pro Vice-Chancellor Science;
- xi. Pro Vice-Chancellor Learning and Teaching;
- xii. Pro Vice-Chancellor Indigenous Strategy and Leadership;
- xiii. Pro Vice-Chancellor Research and Innovation;
- xiv. Pro Vice-Chancellor (Academic Excellence);
- xv. Chief People and Culture Officer;
- xvi. the Chair of the University Council's Risk Committee; and
- xvii. Chancellor.

e. “public official” has the same meaning as defined in the [PID Act](#).

## Section 5 - Public Interest Disclosures

### What Should be Reported?

(9) Disclosers are encouraged to report any matter where they have honest and reasonable grounds to believe that the information they have shows or tends to show alleged wrongdoing within the University, in the absence of any evidence to the contrary.

### What is a Public Interest Disclosure?

(10) Within the University environment a public interest disclosure is a report by a University public official about:

- a. corrupt conduct;
- b. maladministration;
- c. serious and substantial waste of public money; or
- d. failure to exercise functions in accordance with the [Government Information \(Public Access\) Act 2009](#).

(11) Corrupt conduct can take many forms but can be defined as deliberate or intentional wrongdoing, not negligence or a mistake. The conduct must involve a NSW public official (e.g. a University staff member) or public sector organisation (e.g. the University). The [Independent Commission Against Corruption](#) provides examples of corrupt conduct at [What is Corrupt Conduct?](#)

(12) Maladministration involves action or inaction that is:

- a. contrary to law;
- b. unreasonable, unjust, oppressive or improperly discriminatory; or
- c. based wholly or partly on improper motives.

(13) Serious and substantial waste of public money involves the uneconomical, inefficient or ineffective use of resources which result in loss or wastage of public funds or resources.

(14) Disclosures which meet the criteria of a Public Interest Disclosure will be dealt with in accordance with the [PID Act](#).

## What Protections are Available for Making a Public Interest Disclosure (PID)?

(15) Public Officials who make a public interest disclosure will receive legal protections under the [PID Act](#) if the following requirements are met:

- a. the report is about corrupt conduct, maladministration, serious and substantial waste of public money and/or Government information infringement;
- b. the person making the disclosure honestly believes, on reasonable grounds, that the information shows or tends to show the alleged wrongdoing; and
- c. the report has been made to a person who is authorised to receive the report.

(16) A public interest disclosure will not receive protection under the [PID Act](#) if the disclosure is made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

### Protection Against Reprisal Action

(17) According to the [PID Act](#), a person who takes detrimental action against another person that is substantially in reprisal for that person making a public interest disclosure is guilty of a criminal offence. They may also be liable for damages related to any loss that the other person suffers as a result of that detrimental action.

### Protection Against Legal Action

(18) Any University public official making a report of wrongdoing under the [PID Act](#) cannot be subject to any liability; and no action, claim, or demand can be taken against the person for making the disclosure.

(19) A University public official cannot be found to have breached any confidentiality obligation by virtue of making a public interest disclosure.

## Making a False or Misleading Public Interest Disclosure

(20) It is a criminal offence under the [PID Act](#) to wilfully make a false or misleading statement, or attempt to mislead an investigating authority, public authority or public official, when reporting wrongdoing.

# Section 6 - Disclosure Procedure

(21) This procedure details the steps to make a report of wrongdoing within the University and how the University will deal with this.

(22) To make a Public Interest Disclosure regarding another public authority, please see the [NSW Ombudsman](#) website.

## Making a Disclosure

(23) A disclosure can be made by any person identified as a University public official.

(24) A disclosure may be made during or outside of business hours. All disclosures will be treated securely and confidentially.

(25) A disclosure must be made to a role with responsibility to receive a report of wrongdoing. These roles include:

- a. the Vice-Chancellor;
- b. the Disclosures Coordinator; or
- c. a Disclosure Officer.

(26) If a disclosure is made to a staff member who is not a Disclosure Officer the discloser may not be afforded the protections rights under the [PID Act](#). Misdirected disclosures should be forwarded immediately on a confidential basis to a Disclosure Officer.

(27) Assistance to make a disclosure can be sought from University staff identified in this procedure as Disclosure Officers.

(28) Where making a disclosure to a person within the University may not be safe or appropriate, a disclosure may be made to one of the following:

- a. an investigating authority, as outlined below;
- b. a member of Parliament; or
- c. a journalist.

(29) Investigating authorities include:

- a. the [Independent Commission Against Corruption](#) (can be contacted for reports of corrupt conduct);
- b. the [Auditor-General](#) can be contacted for reports of serious and substantial waste of money;
- c. the [NSW Ombudsman](#) can be contacted for reports about serious maladministration;
- d. the [NSW Information Commissioner](#) can be contacted for reports about failure to comply with the [GIPA Act](#).

## How to Make a Disclosure

(30) A disclosure can be made either in writing or verbally. The University [Internal PID Report Form](#) should be used.

(31) The University prefers that a disclosure is made in writing to ensure clarity of detail and to assist with the subsequent assessment and any formal investigation.

(32) If a disclosure is made verbally the person receiving the report will:

- a. ensure the location and time of the disclosure are appropriate for the discloser to make their disclosure comfortably, and to ensure the discloser is protected;
- b. ask for the disclosure to be made in writing using the University [Internal PID Report Form](#); or
- c. document the details of the disclosure in writing and request the person making the disclosure to sign and date the document; and
- d. discuss the confidentiality restrictions in respect of the disclosure and the discloser's identity.

(33) Any evidence of wrongdoing should also be provided with the disclosure, wherever possible.

(34) If a Disclosure Officer receives a disclosure regarding allegations they may be involved in directly or indirectly, they are required to forward the disclosure, on a confidential basis, to another Disclosure Officer or the Disclosures Coordinator.

(35) Disclosers are strongly encouraged to maintain accurate records of all actions and discussions throughout the implementation of this procedure.

## Anonymous Disclosures

(36) A disclosure can be made anonymously, however, this may make it difficult for the University to deal with the disclosure; for example, where it may be necessary to obtain more information or detail to proceed with an investigation. Whilst an anonymous disclosure will be dealt with, where possible the University strongly recommends that persons making a disclosure identify themselves to allow for the necessary protection and support to be provided.

## Seeking Support and Advice

(37) Disclosers may wish to seek support from one or more of the following, where relevant:

- a. a Disclosure Officer;
- b. the University's [Employee Assistance Program](#);
- c. Human Resource Services; or
- d. [NSW Ombudsman](#).

## Responding to a Disclosure

(38) Disclosure Officers who receive a disclosure must ensure that the matter is dealt with promptly, impartially, and in accordance with this procedure and associated policy.

(39) The Disclosure Officer who receives the disclosure will:

- a. not disclose the fact that a report has been made, other than to the Disclosures Co-ordinator or Vice-Chancellor;
- b. maintain appropriate and confidential records of the report received; and
- c. immediately escalate the report to the Disclosures Coordinator, or in their absence the Vice-Chancellor.

(40) The Disclosures Coordinator will:

- a. determine if the discloser wishes to provide consent in writing to divulge their identity and obtain this consent;
- b. notify the Vice-Chancellor of the report;
- c. provide written acknowledgement of the disclosure to the discloser within 45 calendar days of the disclosure being received and provide:
  - i. a timeframe within which further updates will be provided;
  - ii. the name and contact details of persons who can be contacted for further information and/or support; and
  - iii. a copy of the University's [Public Interest Disclosure Policy](#) and this procedure (unless Clause 43 applies);
- d. conduct an assessment of the disclosure against the criteria of the [PID Act](#) and inform the discloser within 6 months of the disclosure being received, of the action or proposed action to be taken in respect of the disclosure;
- e. make a recommendation to the appropriate Deputy Vice-Chancellor, Chief Operating Officer, or equivalent if the disclosure warrants further investigation. (The appropriate Deputy Vice-Chancellor, Chief Operating Officer, or equivalent, is responsible for investigating the matter in line with the Misconduct/Serious Misconduct clause in the relevant [Enterprise Agreement](#));
- f. conduct a risk assessment in accordance with section 8 of this procedure; and
- g. maintain records of all actions taken in accordance with the [Records and Information Management Policy](#).

(41) If the disclosure meets the requirements of the PID Act , but was made under a statutory or legal obligation, or is incidental to the performance of the discloser's day-to-day functions, an acknowledgement letter and copy of the University Public Interest Disclosure policy and this procedure will not be provided.

(42) The Disclosures Coordinator is authorised to escalate disclosures directly to the Chancellor , where the Vice-Chancellor may be the subject of the disclosure.

(43) Where it is determined the disclosure does not constitute a public interest disclosure, the Disclosures Coordinator will:

- a. identify if the matter warrants implementation of an alternative University procedure;
- b. identify if the matter warrants further investigation in order to resolve the matter and protect the University's interests, including but not limited to its staff, brand, reputation, operations, performance and safety; and
- c. inform the discloser (if identifiable) of the outcome of the assessment of the disclosure and the reason for this determination. This must occur within 6 months of the disclosure being made.

(44) If an investigation is warranted, a Committee of Inquiry or Independent Review may be initiated to review the allegations in line with the appropriate clauses of the relevant Enterprise Agreement . Such proceedings will comply with the requirements of the Enterprise Agreement , and will be facilitated by Human Resource Services .

## **Section 7 - Maintaining Confidentiality**

(45) The University understands that a discloser may require complete confidentiality in relation to their identity and disclosure to prevent reprisal.

(46) The University will take appropriate steps to keep the discloser's identity and the disclosure confidential and will discuss with the discloser if and how confidentiality may be maintained.

(47) Practical measures to protect a discloser's identity may include:

- a. redacting personal information and references to the discloser in written information;
- b. referring to the discloser in a gender-neutral context; and
- c. contacting the discloser to help identify certain aspects of their disclosure that could inadvertently identify them.

(48) University staff (including those employed by a University controlled entity) play an important role in assisting with an investigation to ensure any report of wrongdoing is investigated impartially and confidentially. They have responsibility to:

- a. maintain confidentiality in connection with a public interest disclosure being investigated; and
- b. fully cooperate with investigation activities and to facilitate the progress of investigation work by providing input and assistance in an appropriate manner.

(49) Where confidentiality cannot be maintained, the Disclosures Coordinator will:

- a. seek the discloser's consent to release any details required to undertake an assessment or investigation; and
- b. develop a plan, in consultation with the Vice-Chancellor and the discloser, to support and protect a discloser from reprisal.

(50) See also [NSW Ombudsman Fact Sheet 7 – Confidentiality and Its Practical Alternatives](#)

## **Section 8 - Reprisal and Workplace Conflict**

### **Managing the Risk of Reprisal and Workplace Conflict**

(51) The Disclosures Coordinator will undertake a thorough risk assessment to identify the risk of detrimental action in reprisal for the disclosure, as well as indirect but related risks of workplace conflicts or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

(52) Depending on the circumstances, the appropriate Deputy Vice-Chancellor, Chief Operating Officer, or equivalent, may:

- a. relocate the discloser or the staff member who is the subject of the disclosure; or
- b. grant the discloser or the staff member who is the subject of the disclosure a leave of absence during any Committee of Inquiry or Independent Review in accordance with the appropriate [Enterprise Agreement](#).

(53) Any action taken will be:

- a. taken in accordance with the appropriate [Enterprise Agreement](#), facilitated by Human Resource Services;
- b. taken in consultation with the discloser; and
- c. not be considered as disciplinary action.

## Responding to Allegations of Reprisal

(54) If a discloser believes that detrimental action has been, or is being taken against themselves or another person, the Disclosures Coordinator, Chief People and Culture Officer or Vice-Chancellor should be advised immediately.

(55) In the case of an allegation of reprisal by the Vice-Chancellor this can be reported directly to the Chancellor.

(56) If the University becomes aware of, or suspects, that reprisal is being, or has been taken against a discloser, the University will:

- a. assess the allegation of reprisal to decide whether it should be dealt with under the [PID Act](#), and if the matter warrants investigation or if other action should be taken to resolve;
- b. ensure an investigation is conducted in accordance with the relevant [Enterprise Agreement](#) (if applicable), or by a senior and experienced member of staff, if warranted;
- c. take all possible steps to stop the activity and protect the discloser, where it is established that reprisal is occurring;
- d. initiate appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure;
- e. refer any evidence of an offence under the [PID Act](#), or any other applicable statute, to the [Independent Commission Against Corruption](#) or NSW Police; and
- f. maintain appropriate records in accordance with the [Records and Information Management Policy](#).

(57) If it is believed that a report of an allegation of reprisal is not being dealt with effectively by the University, the [NSW Ombudsman](#) can be contacted, as follows:

Agency	Contact Details
NSW Ombudsman	Web: <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a> Address: Level 24, 580 George Street Sydney NSW 2000 Phone: 02 9286 1000 or 1800 451 524

## Section 9 - The Rights of Persons Who are the Subject of a Disclosure

(58) The University is committed to ensuring staff and members of Council who are the subject of a disclosure are treated fairly and reasonably. This includes maintaining the identity of any person who is the subject of a disclosure as confidential, where this is practical and appropriate.

(59) Persons who are the subject of a disclosure will be advised of allegations made against them at an appropriate time, will be afforded a reasonable opportunity to respond to the allegations made against them and will be advised before any adverse findings. They will also be advised of:

- a. the details of the allegation;
- b. their rights and obligations;
- c. the initiation of a Committee of Inquiry or Independent Review if required;
- d. the outcome of any Committee of Inquiry or Independent Review including any decision regarding further action to be taken; and
- e. their right to contact and utilise the University's support services.

(60) If a Committee of Inquiry or Independent Review is initiated, the objective will be to determine if there is enough evidence to substantiate or refute the matters reported, using the principles of natural justice. The process will be objective, fair and without conflict of interest. The Committee of Inquiry or Independent Review will be concluded before any action may be taken by the University.

(61) The University will provide appropriate and reasonable support to persons who are the subject of a disclosure in the event the allegations have been found to be wrong or unsubstantiated following an appropriate investigation.

## Section 10 - Review of Outcome

(62) Disclosers and subjects of a disclosure are encouraged to contact the University should they be dissatisfied with the manner or process in which the University has dealt with a disclosure.

(63) The University will seek to review its policy and procedures in the event a person expresses dissatisfaction with the outcome of a formal investigation. The review will be conducted by a senior officer who was not involved in handling or investigating the disclosure.

(64) The University is not obliged to re-open an investigation and may conclude any review if:

- a. it is determined that the investigation has been conducted properly; and
- b. there is no new information available; or
- c. any new information available would not change the findings of the investigation.

(65) Complaints regarding the outcome of a disclosure investigation can be referred externally to:

Agency	Contact Details
NSW Ombudsman	Web: <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a> Address: Level 24, 580 George Street Sydney NSW 2000 Phone: 02 9286 1000 or 1800 451 524

## Section 11 - Key Roles and Responsibilities



Role	Responsibilities
Vice-Chancellor	<p>The Vice-Chancellor is the Principal Officer of the University, and has ultimate responsibility for maintaining a working environment that supports genuine disclosures, and ensuring the University's compliance with anti-corruption legislation.</p> <p>The Vice-Chancellor has a responsibility to:</p> <ol style="list-style-type: none"> <li>receive any disclosure of wrongdoing from the Chancellor;</li> <li>receive and assess disclosures from public officials received by, or referred to them from, a Disclosure Officer to determine whether a disclosure should be treated as a public interest disclosure, and to decide how the disclosure will be dealt with;</li> <li>ensure that there are strategies in place to support public officials make genuine disclosures of wrongdoing;</li> <li>protect disclosers making genuine disclosures from any detrimental action so far as possible, and to manage any workplace issues that arise in relation to a disclosure;</li> <li>make decisions following any inquiry or investigation in relation to a disclosure of wrongdoing or appoint an appropriate decision maker;</li> <li>take appropriate action if a disclosure of wrongdoing is confirmed or substantiated;</li> <li>report any matter which is suspected, on reasonable grounds, which may be or may concern corrupt conduct to the <a href="#">Independent Commission Against Corruption</a>; and</li> <li>report any evidence of an offence under section 20 of the <a href="#">PID Act</a> to the Commissioner of Police or the <a href="#">Independent Commission Against Corruption</a>.</li> </ol>
Disclosures Coordinator	<p>The University Secretary is the Disclosures Coordinator. The Disclosures Coordinator is the primary point of contact in the University for a discloser making a report of wrongdoing, and as such has the responsibility to:</p> <ol style="list-style-type: none"> <li>co-ordinate the University's response to a disclosure;</li> <li>acknowledge a disclosure and to provide regular updates and feedback to a discloser;</li> <li>assess whether it is possible and appropriate to treat as confidential the identity of a discloser, and to seek the consent of a discloser making a report to disclose their identity as may be considered prudent;</li> <li>assess the risk of detrimental action related to or likely to arise out of a disclosure, and to develop strategies to manage any risk identified;</li> <li>where required, provide or coordinate support to staff involved in the disclosure, enquiry or investigation process, including protecting the interests of persons who are the subject of a disclosure and ensuring that their rights are respected; and</li> <li>keeping a discloser informed of the progress and outcome of any Committee of Inquiry or Independent Review, having regard to any obligations to maintain confidentiality and privacy, and any limitations or constraints which may be experienced because of a request for anonymity.</li> </ol> <p>The Disclosures Coordinator is also responsible for ensuring compliance with the:</p> <ol style="list-style-type: none"> <li><a href="#">PID Act</a>;</li> <li>University's reporting obligations in accordance with anti-corruption legislation, including compiling and providing any necessary reports to relevant authorities; and</li> <li>University's reporting obligations in accordance with the <a href="#">PID Act</a>, including reporting on statistical information about public interest disclosures in the University Annual Report and to the <a href="#">NSW Ombudsman</a> as required.</li> </ol>
Disclosure Officers	<p>Disclosure Officers have a responsibility to:</p> <ol style="list-style-type: none"> <li>receive reports of wrongdoing and forward them confidentially to the Disclosures Coordinator or the Vice-Chancellor;</li> <li>assist a public official to make a disclosure;</li> <li>make arrangements to ensure that disclosers can make disclosures privately and discreetly, which may require meeting them outside of the workplace;</li> <li>document in writing any disclosure received verbally, and have the document signed and dated by the discloser;</li> <li>discuss with a discloser any concerns they may have regarding possible detrimental action; and</li> <li>provide advice about this procedure and about making a disclosure.</li> </ol>
Staff Supervisors	<p>Staff supervisors play an important role in supporting those involved in, or affected by, this procedure, and have a responsibility to:</p> <ol style="list-style-type: none"> <li>support persons who disclose known or suspected wrongdoing within the University;</li> <li>identify reports made to them in the course of their work which could be a disclosure, and assist a public official making a disclosure to make the disclosure to a Disclosure Officer who is authorised to receive it;</li> <li>implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of detrimental action in relation to a disclosure; and</li> <li>notify the Disclosures Coordinator or Principal Officer immediately if they believe a public official is being subject to detrimental action as a result of a disclosure.</li> </ol>

Role	Responsibilities
University public officials	<p>University public officials have a responsibility to:</p> <ul style="list-style-type: none"> <li>a. be aware of, and comply with, their legal and ethical obligations and University policies;</li> <li>b. make disclosures of wrongdoing in the University in good faith;</li> <li>c. not make false or vexatious accusations of alleged wrongdoing;</li> <li>d. cooperate with investigations and assessments undertaken in accordance with this procedure and associated policies; and</li> <li>e. only discuss a disclosure with those responsible for dealing with it.</li> </ul>

## Status and Details

Status	Current
Effective Date	To Be Advised
Review Date	To Be Advised
Approval Authority	
Approval Date	To Be Advised
Expiry Date	Not Applicable
Enquiries Contact	Legal Office

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"Risk assessment"** - The overall process of risk identification, risk analysis and risk evaluation.

**"Personal information"** - has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

**"Controlled entity"** - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"Disciplinary action"** - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this is as defined in the Student Conduct Rule.

**"Supervisor"** - Staff members with direct supervisory responsibility for other staff within the workplace (a Supervisor may also be member of Senior Management, with duties as an Officer as defined in the Work Health and Safety Act 2011).